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STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Written statement submitted by Human Rights Watch, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[24 March 1998]

GE.98-11366 (E)

1. Human Rights Watch welcomes China's signing of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) on 27 October 1997, although we regret that the ratification by the National People's Congress did not take place at its last meeting in March. Human Rights Watch also welcomes China's announcement on 12 March that it is prepared to sign the International Covenant on Civil and Political Rights (ICCPR). However, the announcement did not specify when the signing might occur nor did it indicate a timetable for ratification. A mid-January government statement that stressed the conflicts between the ICCPR and Chinese law is cause for concern that China is not likely to become a State party in the near future.

2. In the meantime, serious violations of rights guaranteed by both Covenants persist, often breaching China's domestic laws. With respect to political and civil rights, for example, although China's Constitution provides for freedom of speech and press, draconian new regulations went into effect on 30 December 1997, outlining a widened range of Internet offences, among them political subversion, leaking State secrets, "splitting the country", and "defaming government agencies". These offences correspond to crimes under China's Penal Code as well. The crime of "splitting the country", while nowhere succinctly defined, is already being invoked to harass, arrest and sentence Tibetans who peacefully protest Chinese government policies in Tibet or advocate independence. In general, China's 1989 Law of Assembly, Procession, and Demonstration and the 1992 implementing regulations make a protest or demonstration about a politically sensitive issue almost impossible, despite apparent constitutional safeguards for freedom of assembly.

3. The emergence of a fully independent human rights watchdog organization is virtually impossible in China. According to the 1989 Regulations on the Registration and Management of Social Groups, all organizations must register and win approval by the "relevant professional leading organs". For a human rights organization, this presumably refers to the Government-funded China Society for Human Rights Studies, whose publications and statements mimic official policy. A monopoly stipulation in the regulations eliminates the possibility of registering an "identical or similar social group within the same administrative area". In addition, "social groups are not permitted to harm the interests of the State, the society and the collective", a provision which gives authorities discretion to deny registration on the basis of non-specific criteria. Authorities never even accepted a 1993 application from the Shanghai-based Human Rights Association, whose membership included many long-time dissidents, on the ground that the group failed to fulfil application criteria.

4. The right to freedom of thought, conscience and religion is closely linked to the ability to exercise the rights to free expression, association, and assembly. In Tibet, both sets of rights are regularly violated. Monks who refuse to express opposition to the Dalai Lama, to refute claims that Tibet is not a part of China, and to agree that the Chinese Government has a legitimate right to choose the Panchen Lama are severely penalized. They have been expelled from their monasteries, denied admission to any other monastery, banned from seeking work in the Tibetan capital of Lhasa and, in some cases, arrested.

5. Given China's willingness to study the conflicts between the ICCPR and its domestic law, Human Rights Watch urges the Special Rapporteur on freedom of opinion and expression, Mr. Abid Hussain, to immediately seek to undertake an investigatory mission to China, so that he might help to bring Chinese domestic law into conformity with international human rights standards.

6. We hope that China's signing of the ICESCR will lead to renewed attention inside and outside China to the limitations that currently exist on a right explicitly guaranteed by the ICESCR, namely, "the right of everyone to form trade unions and join the trade union of his choice", (art. 8(a)) and the right to strike (art. 8(d)). China's April 1992 Trade Union Act provides only for a Government-controlled system of unionization, organized as a pyramid, with the All-China Federation of Trade Unions, the Chinese Communist Party-controlled "mass" organization of workers, at the top. The Act clearly states that "trade union organizations at a lower level are under the leadership of those at a higher level". The provisions of the Act, coupled with denial of the right to strike and severely restricted provisions for collective bargaining, effectively negate the power of workers to negotiate their conditions of employment or to be guaranteed effective grievance procedures. The Trade Union Act gives unions only advisory powers, to "submit suggestions" and "suggest solutions".

7. Chinese authorities are still detaining or exiling Chinese citizens who have stood up for the rights of workers to form their own unions, to strike, and to bargain collectively. Han Dongfang led the Beijing Workers Autonomous Union until it was disbanded and he was jailed in the aftermath of the massacre in Beijing in June 1989. In 1992, Chinese authorities gave him permission to spend a year in the United States for treatment for drug-resistant tuberculosis. Han's repeated attempts to return to China after the year was up have all been rebuffed. Liu Nianchun, a prominent labour activist and principal leader of the League for the Protection of the Rights of the Working People, was administratively sentenced to a three-year re-education through labour term for his activity in forming the organization and for writing open letters criticizing the Government and the Party. Zhang Lin, another labour activist and organizer of the League for the Protection of the Rights of the Working People, received a three-year re-education sentence, on the pretext of being a "hooligan" and fathering a child out of wedlock. Liu is still serving his sentence; Zhang is in exile. On 23 January 1998, Li Qingxi, a former health worker in Datong, Shanxi province, was seized for putting up notices calling on workers to form their own independent unions. By 24 February, he had been sentenced without trial to a one-year re-education sentence but was permitted to return home instead of being transferred to a re-education facility.

8. Human Rights Watch urges the Commission on Human Rights to ask the International Labour Organization (ILO) to send a contact mission to China to investigate the prohibitions placed on Chinese workers' rights to freedom of association. It is also important to note that China has not ratified either the Freedom of Association and Protection of the Right to Organize Convention (No. 87) or the Right to Organize and Collective Bargaining Convention (No. 98).